NRTA · NTCA · OPASTCO

Rural Telephone Coalition

FEB 14 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC DOC 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS

of the

RURAL TELEPHONE COALITION

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February 14, 1997

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SUMMARY

The Commission cannot make decisions on access charge changes for price cap carriers in isolation. The many rate of return LECs commenting in this proceeding emphasize the point that they are also subject to competitive pressures and changes brought about by the 1996 Telecom Act. They also need options and flexibility. They, like the RTC, are concerned that the Commission will prejudge issues that will affect them even though it purports to make changes for price cap carriers only with a few exceptions. The record established thus far indicates that the Commission should carefully coordinate its decisions in this proceeding with its decision in the universal service preceding and the Joint Board proceeding that will consider separations reform to prevent unintended harm, disruptions and distortions and to ensure a smooth transition to the new regulatory regime.

The IXCs urge the Commission to adopt measures that would force the LECs to practically give away access or require consumers to foot the tab for the connections that enable IXCs to sell interstate interexchange services and reap the profits that go with that business. The Commission cannot accept IXC attempts to wish away the costs they cause or ignore IXC failings to pass on the benefits of access charge reductions to consumers. The Act's requirement of "just and reasonable" rates cannot be avoided under the guise of redefining what the LECs' costs are. Furthermore, the Commission should ensure that the public reaps the benefits of reductions as it adopts rules to further the new competitive regime. The RTC does agree that the CCL charge should be restructured. It supports recovery of CCL costs through flat charges to IXCs or some other mechanism that is competitively neutral and administratively simple. However, it opposes proposals that the Commission forbear from applying the interexchange

averaging requirements of the Act. Interexchange rate averaging is necessary to ensure enforcement of the rate and service comparability provisions in the Act. The Commission is not free to use its forbearance authority in a manner that would defeat the specific requirements of Section 254 (b)(3).

There is ample evidence in the record demonstrating that the proxy models that have been submitted in the universal service docket are not appropriate to establish the cost LECs should recover in access service. The models were principally designed to show required support levels and cost differences among small geographic units. Constitutional principles constrain the Commission's authority to rely on models or arrive at pricing decisions that result in substantial under recovery. The prohibition against uncompensated takings requires a stranded investment recovery mechanism or some other means allowing a sufficient time for the recovery of prudently incurred costs and transition to total competition.

The Commission should also not abandon the universal service principles of the Act simply because of IXC pressure to reduce access charges wherever possible. The elimination of the SLC cap on second lines could retard economic development in rural areas and place access to advanced services out of reach for many rural consumers. The second line is often used for Internet access and education in remote regions, since the distance to schools and libraries is substantial. The Commission is abandoning its demonstrated commitment to education in such regions by abandoning second lines in rural areas.

Commission policies aimed at promoting competition are legitimate only if they maintain or build a level playing field. The proposal to impose terminating charges on LECs and not CLECs is an example of misguided policy. The RTC and others urge the Commission to reject the notion that CLECs face different market pressures and incentives. There is no basis for adopting disparate terminating access requirements that impose a competitive disadvantage on ILECs. The competitive forces that will prevent CLECs from overcharging for termination are equally applicable to ILECs. The best course would be to let the marketplace govern terminating access pricing for all carriers, unless evidence of actual abuse ever comes to light. In no event should the Commission shift the charge for terminating access to the recipient of a call. Under those circumstances, the cost causer would have no responsibility for the charge.

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REPLY COMMENTS OF
THE RURAL TELEPHONE COALITION

The Rural Telephone Coalition ("RTC") submits these Reply Comments in response to the comments filed pursuant to the *Notice of Proposed Rulemaking* ("*NPRM*") released in the proceeding captioned above.[1]

The RTC is comprised of the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO).

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1 *See Notice of Proposed Rulemaking*, FCC 96-488, December 24, 1996.

I. THE COMMISSION SHOULD COORDINATE ITS RULEMAKING WITH THE UNIVERSAL SERVICE PROCEEDING AND THE SEPARATIONS PROCEEDING IT INTENDS TO INITIATE.

A. The Commission should consider the impact its rules will have on rate of return regulated carriers.

In its original comments, the RTC pointed out the pressing need for access charge reform options for rate of return regulated carriers as well as price cap carriers.[2] All incumbent LECs are affected to some degree by the new competitive environment and all must adjust to changes brought on by the Telecommunications Act of 1996.[3] Because access, universal service and separations reform are intertwined and involve complex relationships between different carriers and different jurisdictions, the Commission cannot make changes in this docket without impacting rate of return regulated carriers. Other parties agree with the RTC. Cincinnati Bell, for example, states that it faces the same pressures as the price cap LECs and faces additional business risks due to its smaller size and scope.[4] Many other smaller carriers are concerned that the rules the Commission adopts in this proceeding will ultimately have a significant effect on them, even though the Commission says it intends to limit most of its changes to the price cap LECs.[5] They reiterate that competition is not limited to price cap LECs and urge the

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[2] RTC Comments, p. 3.

[3] Telecommunications Act of 1996, Pub. L, No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. §§ 151 *et. seq* (1996 Act). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as codified in the United States Code.

[4] Cincinnati, p. 3.

[5] Minnesota Independent Coalition, p. 3; ALLTEL Telephone Services Corp., p. 7; Roseville Telephone Co. p. 6.

Commission to consider the needs and circumstances of rate of return carriers when it crafts options for the price cap LECs.[6] The RTC urges the Commission to carefully consider these comments and weigh the impact of its proposals on rate of return LECs. The Commission points out that these LECs serve less than 8% of the access lines in the country. This low number does not reflect the importance of the services provided by these carriers that, in fact, serve more than 40 % of the land mass in the country and provide the facilities that make a nationwide system possible from shore to shore.

B. The Commission should coordinate its rulemaking in this proceeding with universal service and separations reform.

The RTC agrees with the Commission's conclusion that separations reform is critical. The rules adopted in this proceeding must ultimately be reconciled with potential changes in jurisdictional allocations and the outcome of the pending universal service proceeding. The RTC urges the Commission to anticipate potential changes, realizing that a Section 410(c) Joint Board is also necessary for separations rules changes. Since decisions in this docket should neither foreclose Joint Board decisions nor contravene existing Part 36 rules without corresponding remedies, coordination is obviously critical.

At this stage, the Commission has the difficult task of crafting access rules while averting major distortions in separations and universal service support. Only when the outcome of all of these proceedings and of the ongoing judicial review of the interconnection rules can be analyzed to determine the cumulative impact can the Commission evaluate whether it has achieved the 1996 Act requirements, including its universal service purposes. Separations changes and the

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[6] TDS Telecommunications Corp., p.11.

new universal service support mechanism will no doubt also require action on the part of individual state commissions. In the event distortions cannot be avoided in the interim between the completion of this proceeding and the completion of related federal and state proceedings on separations and universal service, the RTC urges the Commission to adopt transitional measures to ensure that small and rural rate of return carriers, in particular, will not be harmed by rules that result in under recovery from the interstate jurisdiction. The RTC also urges the Commission to refrain from using universal service revenues under new mechanisms to set off access revenues until it knows the cumulative impact of its multiple proceedings. The Commission's task is to ensure "sufficient" universal service support and make implicit support explicit. It cannot match up what support is new or "double" until it knows how all the pieces fit together.

II. IXCS MUST CONTINUE TO PAY FOR THEIR SHARE OF COMMON LINE COSTS, RATHER THAN UNFAIRLY SHIFTING THEM TO THE END USER.

A common refrain of IXCs and CLECs in the access reform proceeding is that the end user is the ultimate cost causer. The Telecommunications Resellers Association (TRA) asserts that non-traffic-sensitive (NTS) loop costs should be recovered "from the cost causer -- *i.e.*, the end user."[7] TRA is conveniently ignoring that the loop happens to connect the end user to TRA's members. Sprint demonstrates its bias when it maintains "there is no reason why such consumers should not be charged the full cost of connecting them to the network."[8] Sprint proposes "lifting the cap on the SLC (subscriber line charge) and recovering all common line

[7] TRA, p. 34.

[8] Sprint, p. 7.

costs assigned to the interstate jurisdiction directly from the cost causer -- the end user."[9] Both TRA and Sprint would like the consumer to pay the costs of IXCs to connect to the loop in addition to the costs that the consumer bears for his own connection. Sprint extends this twisted logic by arguing that the end user "has chosen to be connected to the network so as to be in a position to receive calls, and should be expected to pay . . . the cost associated with the decision to connect to the network."[10] While the end user should pay his share of costs, it makes no sense for the end user to also pay Sprint's costs to access the loop. The "cost causer" argument was thoroughly aired in CC Dockets 78-72 and 80-286 during the 1980s and wisely abandoned. It should be returned to its grave.

AT&T, in lock-step with its IXC brethren, also ignores the legitimate costs of IXC access to the local loop. AT&T begins its comments as the consumer's "friend" by fretting about charges "ultimately that consumers bear."[11] Later, AT&T shows its concern for the consumer by reasoning that "the fundamental flaw in the CCLC is that it is not assessed directly on the 'cost causing' purchaser of the subscriber line."[12] Then, as if lumping AT&T's share of the cost of access to the local loop on the consumer is not bad enough, AT&T suggests throwing in "the loop termination at the local switch, and any retail marketing expenses."[13] AT&T and the other IXCs' comments are guided by a results-oriented desire to drive their share of CCL costs to zero,

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[9] *Id.*, p. 11.

[10] *Id.*

[11] AT&T, p. 1.

[12] AT&T, p. 52.

[13] AT&T, p. 53.

while forcing ILECs to raise the end users' bills to excessive levels. The IXCs will not only reap the benefits of newfound profits, but they will also be the main beneficiaries of the anger that will be focused on the ILEC industry for raising local rates after the Act promised lower rates.

It goes without saying that Congress will "not take kindly to any increase in SLC as part of access reform."[14] Not only will Congress take a jaundiced view of the IXC proposal to shift all common line costs onto the consumer, but so will the states. NARUC "does not agree that it would be appropriate to impose these costs on end users, directly or indirectly."[15] There are definite costs associated with IXC use of the local loop and "interexchange carriers should pay a portion of the NTS loop cost because they use the LECs loop to provide their services."[16] None of the IXCs want to own up to this fact.

Finally, the Commission cannot ignore the fact that some rural telephone companies' loop costs are substantially above average so that requiring them to charge a SLC covering the entire interstate positions of the loop would violate the affordability and comparability requirements of the 1996 Act.

III. THE IXC PROMISE TO "FLOW THROUGH" ACCESS CHARGE REDUCTIONS IS BELIED BY HISTORY.

The IXCs answer the critique of raising local rates with their oft-repeated "flow-through" canard. This is best characterized by AT&T's prediction "assuring that consumer prices for

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[14] "Congressional Aides Warn Against Raising SLC," Communications Daily, February 6, 1997, p. 2.

[15] NARUC, p. 3.

[16] *Id.*, p. 13.

telecommunications services overall will fall by at least the SLC increase."[17] Sprint apes this argument when it prognosticates that "the typical consumer will see substantial reductions in charges for toll calls and optional service features, that may largely offset -- or even more than offset -- any increase in basic monthly local rates that may occur."[18] Sprint goes on to prophesy that "it is only those consumers who subscribe to no optional features and who seldom make toll calls that will see an appreciable rise in their monthly communications bill."[19] The latter customers should not be abandoned by regulators simply because they are less profitable than the feature-buying, toll-calling customers that Sprint obviously favors. In any case, the "flow-through" argument is naturally full of holes. As USTA succinctly states,

> [I]t is important to note that over the period that price cap regulation has been in effect, LECs have implemented approximately $9 billion in access charge reductions. The three largest IXCs have all raised their prices six times over roughly that same period. On behalf of consumers throughout the nation, the Commission should respond: 'show me the money'."[20]

The RTC urges the Commission to adopt a formal requirement for interexchange carriers to reduce their rates to end users to pass through any access charge reductions. Some comments assert that the requested access changes will benefit consumers by reducing interstate prices.[21] Like the RTC, the AARP, apparently not confident that price reductions will follow upon access charge reductions, also seeks to translate savings on access charges for the interexchange carriers

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[17] AT&T, p. 53.

[18] Sprint, p. 7.

[19] *Id.*

[20] USTA, p. 3.

[21] *E.g.,*AT&T, p. 53.

into consumer benefits. The AARP stresses its concern that interexchange carrier pricing does not evidence the discipline expected from competition:

> It is quite clear the competition in long distance markets is selective and targeted to specific market segments. In other market segments, the long distance companies engage in umbrella pricing. Most importantly, recent pricing activity by the long distance companies makes it clear that simply lowering their access costs does not and will not result in a pass-through to consumers [footnote omitted].[22]

Recent news accounts suggest that AT&T now claims it will pass through reductions in its rates.[23] However, the Commission should not accept vague, unbinding assurances from a single carrier. The pricing behavior that the AARP references provides strong evidence that the interexchange marketplace, although ruled competitive by the Commission, has not driven interexchange carriers' pricing to TSLRIC or TELRIC or even each carrier's own actual costs. Since the interexchange carriers are staunch proponents of TSLRIC and TELRIC pricing, the Commission may wish to ascertain the extent to which their "competitive" pricing bears out the economic theory they are championing - <u>before</u> it imposes such theory on ILECs as a regulatory requirement. In any event, by mandating pass through the Commission can make sure that access rate reductions do not become part of the umbrella pricing phenomenon AARP describes. Moreover, to prevent the channeling of access charge savings into support for highly competitive pricing limited to the most profitable parts of the market, the Commission should require equitable reductions for all classes of interexchange carriers' end users.

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[22] *Ibid.*

[23] *Communication's Daily,* AT&T's Allen promises access charge savings to customers, p. 1, in February 5, 1997.

IV. ALTHOUGH NONTRAFFIC SENSITIVE RECOVERY OF CARRIER COMMON LINE COSTS IS IMPERATIVE, THE COMMISSION CANNOT LAWFULLY FORBEAR FROM REQUIRING GEOGRAPHIC AVERAGING OF CCL CHARGES PASSED THROUGH TO IXCS' END USERS.

The RTC[24] supports proposals to recover CCL costs through a flat rate charge to IXCs or some other mechanism that is both competitively neutral and administratively simple. A mechanism of this sort will improve consistency with the non-traffic sensitive manner in which loop costs are incurred. Some comments[25] assert that bulk-billing based on minutes of use would be unworkable. In contrast, the Fla. PSC supports[26] a bulk-billing or capacity charge approach.[27] The RTC believes that flat charges or bulk billing to interexchange carriers can be imposed on presubscribed lines or some other administratively feasible basis without reintroducing a usage measurement.

Worldcom[28] urges the Commission to forbear from applying the interexchange averaging requirements of section 254(g) to let interexchange carriers recover those costs on a deaveraged basis if it uses a flat rate to interexchange carriers rather than uncapping and deaveraging the SLC. The main reason it advances is that customers in low cost areas would otherwise be forced to subsidize the higher loop costs of customers in high cost areas.

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[24] RTC, pp. 6-9.

[25] ACTA, pp. 5-6.

[26] Florida PCS, p. 2.

[27]The RTC does not agree with the FlaPSC that the Commission should consider reducing the interstate CCL allocation, agreeing instead with the WUTC that IXCs should continue to be responsible for a reasonable share of the costs of connections they need to reach their customers.

[28] Worldcom, pp. 34-37.

The proffered reason does not answer the statutory forbearance criteria set forth in section 10 of the 1996 Act, the forbearance provision Worldcom seeks to invoke.[29] The whole purpose of the interexchange rate averaging requirement in section 254(g) is to prevent the operation of market forces from precluding just the kind of averaging across markets that Worldcom wants to avoid. However, to justify forbearance, Worldcom would have to show that the averaging is not necessary to protect consumers or to keep rates just and reasonable or that deaveraging would serve the public interest. It has not done so. Nor has it attempted to justify ignoring the mandate in section 254(b)(3) for "reasonably comparable" rural and urban rates and services.[30] The deaveraging proposal itself demonstrates that enforcement of the statutory mandate is necessary to maintain the averaged interexchange charges Congress concluded were fair and to protect consumers in high cost areas from the marketplace failure represented by deaveraging. Worldcom's forbearance arguments boil down to disagreement with Congress's chosen policy of keeping all rural rates and services in line.

The record does not contain an adequate showing that the standards for forbearance can be adequately met to justify deaveraging end user charges contrary to the interexchange averaging and rural-urban parity requirement. Accordingly, the Commission should enforce the law as Congress enacted it and forbid deaveraged charges by interexchange carriers to recoup CCL costs charged to them by ILECs.

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[29] 47 U.S.C. § 160.

[30] 47 U.S.C. § 254(b)(3).

V. OTHER IXC COMMON LINE PROPOSALS WOULD UNFAIRLY BURDEN LOCAL EXCHANGE CARRIERS.

Both MCI and Sprint have added some additional and unnecessary regulatory proposals to the access reform comments. MCI contends that "[a]ny rate structure must be auditable" and "without this ability, access customers will find themselves in the situation of having no choice but to trust the LECs."[31] The RTC is not sure what MCI means by "audible" but certainly doubts it would agree to have this regulatory burden applied to its rates. Sprint extends MCI's idea further by proposing to "require all the price cap ILECs to submit TELRIC cost studies."[32] Such an unfair proposal would be an immediate and unnecessary burden on both ILECs and the Commission. The Commission should avoid adding additional regulatory burdens to any industry group. Above all, it should avoid adding extra regulatory burdens to ILECs. The principle of competitive neutrality should be a two way street.

VI. THE PROPOSED ELIMINATION OF THE SLC CAP ON ADDITIONAL LINES IS UNLAWFUL, SERVES NO PUBLIC POLICY OBJECTIVE, AND WOULD BE AN ADMINISTRATIVE BURDEN.

The Commission's proposal to eliminate the SLC cap on second lines, second residences, and multiline businesses[33] is in direct conflict with the Telecommunications Act. As the RTC and other commenters point out, the law requires urban / rural comparability.[34] The Commission

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[31] MCI, p. 75.

[32] Sprint, p. 8.

[33] NPRM, ¶ 65.

[34] The 1996 Act requires that consumers ". . . in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services...that are <u>reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably</u>

should not abandon the universal service principles of the Act simply because of IXC pressure to reduce access charges wherever possible. The elimination of the SLC cap could make access to advanced services, available through a second line, out of reach for many rural consumers. In many cases, the second line is used for Internet access and education in remote regions since the distance to schools and libraries is substantial. In essence, by abandoning second lines in rural areas, the Commission is abandoning its proclaimed commitment to education in such regions.

The only possible public policy rationale for discarding the SLC cap on additional lines is revealed by Sprint. Sprint suggests that "uncapping the multiline business SLC would reduce the CCL revenue requirement by a mere 3.19%, and removing the cap on additional residential lines would reduce the CCLC by only 8.01%."[35] In other words, the only policy reason to eliminate the SLC on additional lines is that it reduces the IXCs' revenue requirement. Unfortunately, according to Sprint, that is just not enough of a windfall to them.

However, Sprint does point out the difficulties of administering and enforcing the proposal and states that "[r]esidential customers who have multiple lines could easily evade the additional charges by having each line billed to a different member of the family."[36] Other commenters are aware of the administrative impediments. Bell Atlantic and NYNEX raise a number of concerns.

> First, neither NYNEX nor Bell Atlantic have comprehensive historical records of second lines, so a complete identification of second lines would be very difficult except on a

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comparable to rates charged for similar services in urban areas." [1996 Act at Section 254(b)(3)] (emphasis added).

[35] Sprint, p. 17.

[36] *Id.*

> going forward basis. Second, to the extent the Commission intends to differentiate second lines to families from first lines to new tenants in shared address dwellings, the change requires customer self-reporting and calls for information collection and verification by the LECs that goes far beyond customer information collected today.[37]

NARUC also agrees with the administrative implausibility of the proposal and is "deeply concerned with the administrative difficulties of having different charges assigned to primary and secondary lines."[38] JSI adds, "from a practical perspective, it will be extremely difficult, if not impossible, for any telephone company (particularly a rural telephone company) to obtain the residential subscriber information necessary to comply with this recommendation."[39] Simply put, the proposal to eliminate the SLC cap is at odds with the urban / rural comparability mandate of the Law , has no reasonable public policy rationale, and fails any cost / benefit analysis since the administrative burden of interrogating local customers about additional lines outweighs the "mere" (to use Sprint's words) IXC revenue requirement savings.

VII. THE TIC CONTAINS LEGITIMATE TRANSPORT COSTS THAT MUST BE IDENTIFIED AND SHIFTED TO OTHER ELEMENTS BEFORE IT IS PHASED OUT.

The majority of commenters support identifying the proper costs of transport contained within the transport interconnection charge (TIC). Not surprisingly, IXC commenters are driven more by a results-oriented frenzy to reduce access charges at every level by as much as possible, rather than legitimate cost-causative principles. For example, MCI asserts that "no TIC is

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[37] Bell Atlantic and NYNEX , p. 33.

[38] NARUC, p. 12.

[39] JSI, p. 9.

necessary" and it "is unclear what legitimate costs, if any, are reflected in the TIC."[40] Many commenters document the legitimate costs, which should clear up MCI's confusion. NECA separates existing TIC cost components "into two distinct categories: (1) that portion that can be assigned to other Part 69 access categories without changes to separations rules; and (2) that portion that cannot be reassigned without separations changes."[41] NECA goes on to outline the legitimate and justifiable transport costs contained in Tandem Switching, Analog End Office Multiplexers, Host Remote Connecting Facilities, Special Access Rates Used As A Surrogate For Local Transport Costs, SS7 A-Link Costs, Tandem Switched Transport Re-Calculation, and Separations Changes.[42] The TIC cannot simply be "reduced to zero"[43] as Sprint claims. The Commission must examine the real transport costs that have been outlined by so many commenters.[44]

AT&T also ignores valid transport costs when it proposes to eliminate the TIC "immediately".[45] As Bell Atlantic and NYNEX state, "[t]here is no mandate to eliminate or even reduce the charge."[46] The RTC and other commenters suggest that the Commission further examine the original nature of the TIC charge. USTA demonstrates that the "residual portion of

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[40] MCI, pp. 84-85.

[41] NECA, p. 4.

[42] *Id.*, p. 5-9.

[43] Sprint, p. 8.

[44] See GVNW, pp. 7-8, NECA, pp. 5-9, and USTA, pp. 63-66.

[45] AT&T, p. 59.

[46] Bell Atlantic and NYNEX, p. 36.

the TIC revenues represents real costs resulting from past separations decisions, as well as the interim local transport restructure."[47] As the original nature of the TIC is examined, the Commission must keep in mind "that initial tandem-switched transport rates were presumed reasonable if set as a weighted average of the per-minute cost of DS3 and DS1 rates calculated using 9000 minutes of use per month."[48] As the RTC, GVNW, and others make evident, "[f]or many non-price cap companies, the actual minutes traversing the tandem circuits is significantly below this level."[49] The Commission should not rush to eliminate the TIC with the haste that the IXCs would like, and instead should examine the true costs of transport.

VIII. THERE IS SUBSTANTIAL SUPPORT FOR A MECHANISM PERMITTING LECS TO RECOVER STRANDED INVESTMENT COSTS ATTRIBUTABLE TO PRIOR REGULATORY MANDATES.

A The RTC agrees that the commission should not rely on cost proxy models to establish access rates.

The Commission tentatively concludes that its goal for prescriptive access reform should focus on rates based on some form of a TSLRIC pricing method.[50] The RTC believes a market based approach to reform is preferable to the prescriptive approach and agrees with parties that oppose use of proxy models to establish prices. Nonetheless, the Commission must address recovery of the differential between forward looking and actual costs in the event that it adopts TSLRIC or some other forward looking cost methodology as the standard for prices under a

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[47] USTA, p. 66.

[48] GVNW, p. 7.

[49] *Id.*

[50] NPRM, ¶ 222.

prescriptive approach.[51] The Commission should reject use of the proxy models to determine access prices.[52] Pacific Telesis Group has summarized the reasons the models are not appropriate for setting access charges: (1) In the Universal service context, the models may be appropriate for dissaggregating loop costs down to small geographic areas in order to estimate the costs of serving these areas. They are not appropriate for determining the specific pricing decisions LECs make. Pacific points out that these decisions involve detailed cost studies which are already being performed across the country to determine the cost of unbundled elements and access. (2) The models were developed to create a high degree of deaveraging, show the differences in small geographic areas and properly target support. There is neither a need nor any proposal to similarly disaggregate access prices to small geographic units and actual cost information at small unit levels is not available. (3) The models do not contain adequate data for pricing access. Access services vary in cost according to the volume of traffic associated with the facilities. That dependency on volume of usage overwhelms the effect of variable geographic influences that the models rely on. (4) The models are designed to determine support, not total compensation. It would be inappropriate for the Commission to use models to measure or set specific company prices, models that estimate costs and assume support recipients may recover their total costs

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[51] *See* January 14, 1997, letter of Alfred F. Kahn to Chairman Reed E. Hundt making the point that prices are set on the basis of the actual incremental costs of incumbents in unregulated markets, not on what costs ought to be, assuming infrastructure is constantly updated to completely embody today's most efficient technology. "' Just and reasonable' rate levels incorporate whatever portion of the actual costs of the companies and whatever markups their respective traditional regulatory practices justify...."

[52] MCI, for example, suggests that Total Element Long Run Incremental Cost (TELRIC) estimates made by models such as the Hatfield Model may be used to reach a reasonable approximation of the forward looking cost of services residing in existing price cap baskets. MCI, p.18.

from other sources.[53] The RTC agrees with Pacific. "Detailed cost studies, specific to each LEC, must be the basis of pricing decisions, not a model designed to broadly estimate costs of serving particular geographies.[54] There are no assurances that proxy model derived prices will meet the statutory requirement of "just and reasonable" rates.[55] The Commission may not adopt standards or models that force carriers to price access in a manner that does not provide for a reasonable return on their investment. MCI's assertion that "economic cost" will not deny LECs an opportunity to earn reasonable returns is bogus. It states that "economic costs includes the cost of capital and a reasonable share of overhead costs. . . ."[56] However, MCI suggests that these "economic costs" can be estimated using its proposed model, which assumes costs of hypothetical network[57]

B. There is widespread support for a recovery mechanism to recover depreciation deficiency and other stranded investments.

The RTC urges the Commission to heed the sane suggestions of parties that advocate the establishment of recovery mechanisms to take account of depreciation deficiency reserves, revenue losses attributable to unaccounted for shifts from the interstate jurisdiction and stranded

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[53] Pacific, pp 32-36.

[54] *Id.*

[55] The RTC has consistently expressed its concern regarding the absence of proper validation of the proposed models for any purpose. *See,* for example, RTC Comments, pp. 4-5, CC Docket No. 96-45, December 19, 1996.

[56] MCI comments, p. 30.

[57] The Hatfield model, however, assumes embedded incumbent LEC costs of capital and regulatory-derived depreciation rates based on embedded capital accounts. This inconsistency has been emphasized in earlier comments. *See,* for example, Comments of the RTC and GVNW-Management, Inc., p. 12, CC Docket No. 96-45, January 24, 1997.

investment costs resulting from the differences between LEC historic costs and forward looking costs methodologies the Commission proposes to use in the future. The Rural Telephone Finance Cooperative with $1.1 billion in outstanding loans to 450 telephone companies serving rural areas echos the RTC's position, namely that the Commission cannot overlook the potential adverse impact its new policies will have on the financial viability of these LECs.[58] The Commission must address the potential financial harm that its rules may cause particularly to small LECs still regulated under rate of return. Other parties also believe that establishment of a recovery mechanism is legally required.[59]

The pro-competitive goals of the 1996 Act do not displace the Commission's equally grave 1996 Act obligation to craft rules that ensure Universal Service.[60] Universal service to all areas of the country has been possible largely because small rate of return regulated LECs have remained financially viable and capable of delivering service to remote high cost areas. Any changes that threaten the financial viability of these LECs would almost certainly conflict with the mandate that provides for comparability of rates and services in all areas of the nation.[61]

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[58] Rural Telephone Finance Cooperative, pp. 1-4.

[59] *See,* California Public Utilities Commission, p.16; Time Warner Communications Holdings, Inc., p. 42; Bell Atlantic and NYNEX, p. 17; Cinncinnati Bell Telephone, p. 21; Citizens Utilities Company, p. 36-44; US West, Inc., pp. 4-14, 75; ITCs, Inc., p. 6; Minnesota Independent Coalition pp. 18-24; GVNW, Inc. Pp.13-14; USTA pp.68-69; Roseville Telephone, p.16; Bell South Telecommunications, Inc., pp.54-56.;TDS Telecommunications Corporation p.12.

[60] 47 U.S.C. § 254.

[61] 47 U. S. C. § 254 (b)(3).

The 1996 Act also does nothing to displace federal constitutional prohibitions against uncompensated takings and Section 201's mandate that rates must be just and reasonable.[62] The Commission is not free to gloss over the potential revenue losses and consequent harm implicit in the changes it will mandate because it assumes these outcomes to be the natural result of competition or expects LECs to make up revenues from other services.

The RTC disagrees with the analysis of applicable constitutional cases cited by the Group of State Consumer Advocates ("State Advocates") who ignore the fact that a regulatory dictate to use forward looking costs or other less-than-compensatory methods to price access is not a LEC controlled or naturally occurring "changed circumstance"[63] due to "competitive pressures." The "stranded investment" issue in the context of access reform in this docket raises different questions than those posed in the "used and useful" analysis cited by State Advocates.[64] As US West points out in its comments, the differential between interstate costs now assigned to access and access charges based on "economic costs" represent real costs incurred in providing service.[65] These costs cannot be amortized out of existence. Moreover the facilities for which the costs were incurred are not mothballed white elephants, but are loops and switches still used to provide service to the public. In fact, Commission rules and the Commission's interconnection order require the LECs to maintain these facilities, to continue to provide access services to existing customers, to sell unbundled elements of their networks and to resell services to

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[62] 44 U.S.C. § 201(b).

[63] State Advocates, p. 56.

[64] *Id.*

[65] US West, pp.49-50.